

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BROOKE M SCHROEDER
Claimant

APPEAL NO: 18A-UI-08160-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/29/18
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 25, 2018, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 21, 2018. The claimant participated in the hearing with Attorney Mary Hamilton. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing, as required by the hearing notice. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from her full-time assistant manager position with Hy-Vee, Inc. April 26, 2018. The last day she worked was March 30, 2018. The claimant told Hy-Vee she could not return to work until she met with her therapist. She was unable to see her therapist until the week of June 11, 2018. The claimant received a letter from her therapist July 17, 2018, stating while she could not work at Hy-Vee she was able and available to work elsewhere. The letter was dated June 25, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able and available for work effective May 13, 2018.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant has the burden of proof in establishing her ability and availability for work. *Davoren v. IESC*, 277 N.W.2d 602 (Iowa 1979). While the medical provider's note was not convincing and raised several questions, such as how can a backdated note determine whether the claimant is able and available weeks earlier, because any medical note is deemed prima facie evidence of the physical ability of the individual to perform the work required, the administrative law judge has no choice but to find the claimant able and available for work effective May 13, 2018. 871 IAC 24.22(1)a.

DECISION:

The July 25, 2018, reference 02, decision is reversed. The claimant is able to work and available for work effective May 13, 2018. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn